

40 CFR Part 268

[FRL-5070-2]

Hazardous Waste Management System; Testing and Monitoring Activities, Land Disposal Restrictions Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

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SUMMARY: This action corrects the final regulations which were published Tuesday, August 31, 1993 ("Hazardous Waste Management System; Testing and Monitoring Activities; Final Rule", 58 FR 46040). This action corrects the unintended removal of text from 40 CFR 268.7(a), which sets out the generator waste analysis and recordkeeping requirements of the land disposal restrictions under Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended.

EFFECTIVE DATE: This action is effective as of August 31, 1993.

FOR FURTHER INFORMATION CONTACT: For further information about this correction contact Kim Kirkland at (202) 260-4761, Office of Solid Waste (Mailcode 5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. For information about 40 CFR 268.7(a) requirements, contact the RCRA Hotline on (800) 424-9346 (toll-free) or, in the Washington, DC metropolitan area, (703) 412-9810.

>>>> Preamble has not been included in this file. <<<<

For the reasons set forth in the preamble, 40 CFR part 268 is corrected by making the following correcting amendments:

PART 268-LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.7(a) is revised to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) Except as specified in § 268.32, if a generator's waste is listed in 40 CFR part 261, subpart D, the generator must test his waste, or test an extract using the Toxicity Characteristic Leaching Procedure, Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part. Except as specified in § 268.32 of this part, if a generator's waste exhibits one or more of the characteristics set out at 40 CFR part 261, subpart C, the generator must test an extract using the Extraction Procedure Toxicity Test, Method 1310 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this Part. If the generator determines that his waste displays the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by INCIN, FSUBS, or RORGS of § 268.42, Table 1), or the characteristic of corrosivity (D002), and is prohibited under § 268.37 of this Part, the generator must determine what underlying hazardous constituents (as defined in § 268.2), are reasonably expected to be present in the D001 or D002 waste.

(1) If a generator determines that he is managing a restricted waste under this part and the waste does not meet the applicable treatment standards set forth in Subpart D of this part or exceeds the applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d), with each shipment of waste the generator must notify the treatment or storage facility in writing of the appropriate treatment standards set forth in Subpart D of this part and any applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d). The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The corresponding treatment standards for wastes F001-F005, F039, wastes prohibited pursuant to § 268.32 or RCRA section 3004(d), and for underlying hazardous constituents (as defined in § 268.2), in D001 and D002 wastes if those wastes are prohibited under § 268.37. Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater (as defined in § 268.2(f)) or nonwastewater (as defined in § 268.2(d)) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides), and the CFR section(s) and paragraph(s) where the applicable treatment standard appears. Where the applicable treatment standards are expressed as specified technologies in §

268.42, the applicable five-letter treatment code found in Table 1 of § 268.42 (e.g., INCIN, WETOX) also must be listed on the notification;

(iii) The manifest number associated with the shipment of waste;

(iv) For hazardous debris, the contaminants subject to treatment as provided by § 268.45(b) and the following statement: "This hazardous debris is subject to the alternative treatment standards of 40 CFR 268.45"; and

(v) Waste analysis data, where available.

(2) If a generator determines that he is managing a restricted waste under this Part, and determines that the waste can be land disposed without further treatment, with each shipment of waste he must submit, to the treatment, storage, or land disposal facility, a notice and a certification stating that the waste meets the applicable treatment standards set forth in subpart D of this part and the applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d). Generators of hazardous debris that is excluded from the definition of hazardous waste under § 261.3(e)(2) of this chapter (i.e., debris that the Director has determined does not contain hazardous waste), however, are not subject to these notification and certification requirements.

(i) The notice must include the following information:

(A) EPA Hazardous Waste Number;

(B) The corresponding treatment standards for wastes F001-F005, F039, and wastes prohibited pursuant to § 268.32 or RCRA section 3004(d). Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater (as defined in § 268.2(f)) or nonwastewater (as defined in § 268.2(d)) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides), and the CFR section(s) and paragraph(s) where the applicable treatment standard appears. Where the applicable treatment standards are expressed as specified technologies in § 268.42, the applicable five-letter treatment code found in Table 1 of § 268.42 (e.g., INCIN, WETOX) also must be listed on the notification.

(C) The manifest number associated with the shipment of waste;

(D) Waste analysis data, where available.

(ii) The certification must be signed by an authorized representative and must state the following:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in 40 CFR Part 268, Subpart D and all applicable prohibitions set forth in 40 CFR 268.32 or RCRA section 3004(d). I believe that the information I submitted is true, accurate and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(3) If a generator's waste is subject to an exemption from a prohibition on the type of land disposal method utilized for the waste (such as, but not limited to, a case-by-case extension under § 268.5, an exemption under § 268.6, or a nationwide capacity variance under subpart C of this part), with each shipment of waste he must submit a notice to the facility receiving his waste stating that the waste is not prohibited from land disposal. The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The corresponding treatment standards for wastes F001-F005, F039, and wastes prohibited pursuant to § 268.32 or RCRA section 3004(d). Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater (as defined in § 268.2(f)) or nonwastewater (as defined in § 268.2(d)) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides), and the CFR section(s) and paragraph(s) where the applicable treatment standard appears. Where the applicable treatment standards are expressed as specified technologies in § 268.42, the applicable five-letter treatment code found in Table 1 of § 268.42 (e.g., INCIN, WETOX) also must be listed on the notification;

(iii) The manifest number associated with the shipment of waste;

(iv) Waste analysis data, where available;

(v) For hazardous debris, the contaminants subject to treatment as provided by § 268.45(b) and the following statement: "This hazardous debris is subject to the alternative treatment standards of 40 CFR 268.45"; and

(vi) The date the waste is subject to the prohibitions.

(4) If a generator is managing prohibited waste in tanks, containers, or containment buildings regulated under 40 CFR 262.34, and is treating such waste in such tanks, containers, or containment buildings to meet applicable treatment standards under subpart D of this part, the generator must develop and follow a written waste analysis plan which describes the procedures the generator will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of Table 1, § 268.45, however, are not subject to these waste analysis requirements.) The plan must be kept on site in the generator's records, and the following requirements must be met:

(i) The waste analysis plan must be based on a detailed chemical and physical analysis of a representative sample of the prohibited waste(s) being treated, and contain all information necessary to treat the waste(s) in accordance with the requirements of this Part, including the selected testing frequency.

(ii) Such plan must be filed with the EPA Regional Administrator (or his designated representative) or State authorized to implement Part 268 requirements a minimum of 30 days prior to the treatment activity, with delivery verified.

(iii) Wastes shipped off-site pursuant to this paragraph must comply with the notification requirements of § 268.7(a)(2).

(5) If a generator determines whether the waste is restricted based solely on his knowledge of the waste, all supporting data used to make this determination must be retained on-site in the generator's files. If a generator determines whether the waste is restricted based on testing this waste or an extract developed using the test method described in Appendix I of this part, all waste analysis data must be retained on-site in the generator's files.

(6) If a generator determines that he is managing a restricted waste that is excluded from the definition of hazardous or solid waste or exempt from Subtitle C regulation, under 40 CFR 261.2 through 261.6 subsequent to the point of generation, he must place a one-time notice stating such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from RCRA, Subtitle C regulation, and the disposition of the waste, in the facility's file.

(7) Generators must retain on-site a copy of all notices, certifications, demonstrations, waste analysis data, and other documentation produced pursuant to this section for at least five years from the date that the waste that is the subject of such

documentation was last sent to on-site or off-site treatment, storage, or disposal. The five year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator. The requirements of this paragraph apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under 40 CFR 261.2-261.6, or exempted from Subtitle C regulation, subsequent to the point of generation.

(8) If a generator is managing a lab pack that contains wastes identified in Appendix IV of this part and wishes to use the alternative treatment standard under § 268.42, with each shipment of waste the generator must submit a notice to the treatment facility in accordance with paragraph (a)(1) of this section. The generator must also comply with the requirements in paragraphs (a)(5) and (a)(6) of this section, and must submit the following certification, which must be signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only the wastes specified in appendix IV to part 268 or solid wastes not subject to regulation under 40 CFR part 261. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(9) If a generator is managing a lab pack that contains organic wastes specified in Appendix V of this Part and wishes to use the alternate treatment standards under § 268.42, with each shipment of waste the generator must submit a notice to the treatment facility in accordance with paragraph (a)(1) of this section. The generator also must comply with the requirements in paragraphs (a)(5) and (a)(6) of this section, and must submit the following certification which must be signed by an authorized representative: I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste and that the lab pack contains only organic waste specified in Appendix V to Part 268 or solid wastes not subject to regulation under 40 CFR Part 261. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(10) Small quantity generators with tolling agreements pursuant to 40 CFR 262.20(e) must comply with the applicable notification and certification requirements of paragraph (a) of this section for the initial shipment of the waste subject to the

agreement. Such generators must retain on-site a copy of the notification and certification, together with the tolling agreement, for at least three years after termination or expiration of the agreement. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

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